No. 83-362

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ANDREW BERES, ET AL.,
Petitioners,

-vs-

HOPE HOMES, INC.

and

CITY OF TALLMADGE,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF OHIO

Brief in Opposition

FREDERICK W. LAWRENCE
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Attorney for Respondent
City of Tallmadge

I

QUESTIONS PRESENTED

Should the Supreme Court of the United States accept jurisdiction upon a claim of constitutional violation of due process and taking of property without just compensation when a State Court, after a full evidenciary hearing, defines the terms "business", "private residence purposes" and "family" contained in a restrictive covenant to include the residents of a group home?

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OPINION BELOW

The judgments of the Ohio Supreme Court overruling petitioner's motion for an order to direct the Court of Appeals and the order dismissing the appeal by petitioner are unreported and are set forth respectively in the Appendix at **1a, 2a.**

The judgment and opinion of the Ohio Court of Appeals - Ninth Appellate District, is unreported and is set forth in the Appendix at **3a** through **11a.**

The judgment entry of the Court of Common Pleas of Summit County, Ohio, the Trial Court, is set forth in the Appendix at **12a, 13a.**

STATEMENT OF THE CASE

On application made by Respondent, Hope Homes, Inc. after all proper notices were given and hearings had pursuant to the Zoning Code requirements, the City Council of the City of Tallmadge, Ohio, enacted **Ordinance 29-1981,** (Appendix, Pages **14a** thru **20a**), on April 8, 1981, granting to such Respondent a Conditional Zoning Certificate for use of the subject property as a family home.

The Petitioners consisting of four families in the general area of such property filed an administrative appeal to the Summit County Common Pleas Court and after a full and complete trial, the Trial Court issued its decision on the 7th day of April, 1982, (Appendix, Page **12a, 13a**) denying the appeal of Petitioners and upholding the action of the City of Tallmadge.

The Petitioners appealed such adverse decision to the Ohio Ninth District Court of Appeals, Case No. 10658, and by unanimous decision of such Court entered on December 15, 1982, (Appendix, Page **3a** through **11a**) the Trial Court's decision upholding the action of the City of Tallmadge was affirmed.

Upon appeal of this decision by Petitioners to the Ohio Supreme Court such Court dismissed the appeal for want of a substantial constitutional question. (Appendix, Page **2a**) and subsequently denied Certiorari (Appendix, Page **1a**).

SUMMARY OF ARGUMENT

The Trial Courts decision, as upheld by the Ohio Ninth Appellate District Court, protects the value of restrictive covenants by allowing only a single family household unit to reside in a single family residence as required by such covenants. Thus, such decision does not violate any constitutional provision.

There exists no conflict between the decision in the instant case with prior Federal Court decisions. On the contrary, the decision is completely consistent with law heretofore enunciated by the United States Supreme Court.

ARGUMENT

The Petitioners appear to be attempting to persuade this Court to review the case upon their claim that this decision has "destroyed the value of restrictive covenants" and creating "uncertainty in real property law"; thus giving rise to a claim of violation of their constitutional rights. The restrictive covenants pertinent to this case provide:

> "No business, commercial sales, manufacturing or otherwise shall be conducted upon any lot. **The premises shall be used for private residence purposes only, and only single-family residences shall be erected or maintained,** and only one residence building upon each lot,----------"

(Emphasis Added)

The entire basis for Petitioners argument appears to be in their interpretation of what the word "family" means to them and that such a meaning does not include a family home for six adult women with developmental disabilities. The Ohio Ninth District Court of Appeals on review found from the evidence presented in the case that the proposed use of the property was a single housekeeping unit residing in a one family dwelling when it said:

> "The inhabitants of the home in this case shall number six adult women with developmental disabilities. They shall live together as a unit. As a unit, they shall maintain the home, prepare meals and perform the various housekeeping chores.

> All of their housekeeping functions are performed under the guidance of a house parent who resides in the home. In spite of the fact that the relationship is not one of consanguinity, the residences are a single family unit.".

The Petitioners urge this Court that the term "family" be defined in a very narrow and strict sense as it is used in a restrictive covenant. However, this Court has previously determined that such a construction would unconstitutionally intrude upon an individuals right to choose the family arrangement best suited to him and his family and that such a family can exist in the absence of consanguinity. **Smith -vs- Organization of Foster Families,** 431 U. S. 816 at page 843 (1976); **Moore -vs- East Cleveland,** 431 U. S. 494 (1977). The Supreme Court of the State of Ohio has recently enumerated the same principals of law in a case involving a foster home for delinquent boys in a single family residential use area. **Saunders, et al -vs- Clark County Zoning Department, et al,** 421 N E 2nd 157 (1981).

There is nothing in the restrictive covenant herein involved that requires a construction that the "family" should be a biologically single unit, nor was any evidence introduced in the Trial Court on the meaning of the words "business" and "family" used therein. In the absence of such and where the words of a restriction contained in a deed of conveyance are equally capable of two or more different constructions, that construction will be adopted which least restricts the free use of the land by the owner of the fee. **Frederick -vs- Hay,** 135 NE 535; **Hunt -vs- Held,** 107 NE 765; **Houk -vs- Ross,** 296 NE 2nd 267.

Also see **State of Montana ex rel -vs- District Courts et al,** 609 P. 2d 245 (1980), where in determining if a home for developmentally disabled children would come within the meaning of "single-family dwellings" the Court stated on Page 248:

> "Moreover restrictive covenants are to be strictly construed; ambiguities therein are to be considered to allow free use of the property. Court should not construe the intent of restrictive covenants when adopted so broadly as to cover the desires of owners confronted with new situations developing thereafter."

The law as referred to by Petitioners in their reference to **Shelley -vs- Kraemer,** 334 U. S. 1, is correct. However, that case involved the "validity of court enforcement of private agreements, generally described as restrictive covenants, which have as their purpose the exclusion of persons of designated race or color from ownership or occupancy of real property." That certainly is not the factual basis of the instant case and is inapplicable.

Further, the arguments of Petitioners pertaining to a taking of private property by the State and impairment of contract are completely without merit and not pertinent to the facts or law in the instance case. The opinion of the Ohio Court of Appeals in this case clearly shows that its decision is based upon its finding from the facts that the residents of this home were a "single family unit." The court did not resort to the meaning of family as found in **Ohio Revised Code, Sections 5123.18 and 5123.19** (Petitioners A-14 and A-17); or as found in the Tallmadge Zoning Ordinance, for its determination was independent of these meanings.

Thus, under the authority of **State of Washington, et al -vs- Maricopa County, Arizona,** 152 F. 2d 556, wherein it states:

> "This clause as its term discloses, is not directed against all impairment of contract obligations, but only against such as result from a subsequent exertion of the legislative power of the state------."

and **Bacon -vs- Texas,** 163 U. S. 207, 216 wherein it is stated:

> "If the judgment of the state court gives no effect to the subsequent law of the state, and the state court decides the case upon grounds independent of that law, a case is not made for review by the Court upon any ground of the impairment of the contract."

this case should not be reviewed by this court upon the ground of impairment of contract.

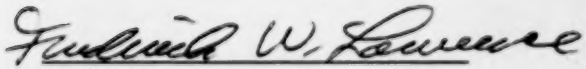
There is no doubt that the use of family homes in residential areas for developmentally disabled persons is of the utmost concern to the public. This has been evidenced by the enactment of laws and subsequent Court decisions throughout the Country. However, that is no reason for this Court to review the judgment herein when such judgment was based upon the evidence presented as to the definition and meaning of "family" and the Ohio Court's decision is in conformity with the Supreme Law of the Land as heretofore depicted by the United States Supreme Court.

CONCLUSION

The Petitioners make a feeble attempt to convince this Court that there exists grounds to permit a review of the Ohio Courts decision in this matter. There is no constitutional violation of law existing. There is clearly no conflict between the rationale and decisions of the Ohio Courts in this matter with the decisions of the United States Supreme Court. As a matter of fact, the basis for Petitioners appeal appears to be their own difference of opinion with the Ohio and United States Supreme Courts as to the definition of the word "family".

Thus, Petitioners request for a Writ of Certiorari should be denied.

Respectfully Submitted:



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Attorney for Respondent,
City of Tallmadge

CERTIFICATE OF SERVICE

I, Frederick W. Lawrence, Attorney for the City of Tallmadge, Ohio, one of the Respondents herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 3rd day of October, 1983, I served by regular mail a copy of the foregoing Brief on Warren W. Gibson, Attorney of Record for the Petitioners, 234 W. Portage Trail, Cuyahoga Falls, Ohio, 44221 and upon Lee C. Davies, Attorney for Respondent, Hope Homes, Inc., 730 Centran Building, Akron, Ohio, 44308, being the only parties required to be served.

Frederick W. Lawrence
Attorney for Respondent
City of Tallmadge

ORDER OF THE OHIO SUPREME COURT DENYING CERTIORARI

(Dated June 8, 1983)

No. 83-235

THE SUPREME COURT OF OHIO

The State of Ohio, City of Columbus

ANDREW BERES et al.,
Appellants

vs.

HOPE HOMES, INC., *et al.*,
Appellees.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR SUMMIT COUNTY TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

LOCHER and J. P. CELEBREEZE, JJ., not participating.

ORDER OF THE OHIO SUPREME COURT DISMISSING APPEAL

(Dated June 8, 1983)

No. 83-235

THE SUPREME COURT OF OHIO

The State of Ohio, City of COLUMBUS.

ANDREW BERES *et al.*,

Appellants

vs.

HOPE HOMES, INC., *et al.*,

Appellees.

APPEAL FROM THE COURT OF APPEALS FOR SUMMIT COUNTY

This cause, here on appeal as of right from the Court of appeals for Summit County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

APPENDIX

OPINION AND JUDGMENT OF THE COURT OF APPEALS FOR THE NINTH JUDICIAL DISTRICT OF OHIO

(Dated December 15, 1982)

Case No. 10658
IN THE COURT OF APPEALS
State of Ohio, Summit County
Ninth District

ANDREW BERES, *et al.*,
Plaintiffs-Appellants

vs.

HOPE HOMES, INC., *et al.*,
Defendants-Appellees.

DECISION and JOURNAL ENTRY

[1] O'NEILL, J.

In April, 1946 an allotment known as the Hilltop Acres Allotment was recorded with the offices of the Summit County Recorder. The plat contained certain restrictions concerning the lots located within the allotment. Those restrictions, in pertinent part, provided as follows:

> "No business, commercial, sales, manufacturing or otherwise shall be conducted upon any lot. The premises shall be used for private residence purposes only, and only single-family residences shall be erected or maintained, and only one residence building upon each lot, except that on lots #4 and #19, one who is the owner of an

> entire lot, may erect and maintain thereon, one additional single-family residence building if the same be located not less than 300 feet from the nearest highway."

In late 1980 and early 1981, the defendant, Hope Homes, Inc., entered into negotiations for the acquisition of a property owned by Mr. and Mrs. Fred Bochert, known as Lot #51 of the Hilltop Allotment, which has a mailing address of 102 N. Alling Road, Tallmadge, Ohio.

The express purpose for the acquisition of this house was the installation of a residential care facility. The facility was intended to house six (6) adult women with developmental disabilities ranging from moderate to severe mental retardation.

Prior to culmination of the negotiations, the officials responsible for the acquisition of this house had actual knowledge of the existence of the plat restrictions associated with this allotment. This is in addition to the constructive knowledge created through the recordation of the plat.

The home must comply with the licensure requirements [2] of the State of Ohio. In order to so comply as a "family home," it is necessary that the facility provide room and board, personal care, habilitation services and supervision in a family setting for not more than eight (8) persons with developmental disabilities. It is further necessary that the operator of such a facility maintain records of the medical treatment accorded the residents, record unusual occurrences such as accidents, injuries and seizures, keep a daily census of admissions, discharges and othe releases and record the progress made on a ninety (90) day basis of the residents' individual habilitation plan. In order for this house to comply with the Ordinances of the city of

Tallmadge and with the licensure requirements with the state of Ohio, substantial changes in the heating, plumbing and electrical equipment will be necessary.

Hope Homes, Inc. will receive reimbursement for its expenses incurred in the care and treatment of the individuals occupying this facility. This reimbursement will include expenditures for the maintenance of the property, food for the residents and depreciation of the physical structure. It will also include salaries of the staff which are currently contemplated to include a regular manager and a week-end manager.

Under the Ordinances of the city of Tallmadge, the property is located within a R-3 residential district. The permissible uses in such a district are single-family residential dwellings and accessory uses provided such uses are incidental to the principal use and do not include any activity **[3]** conducted as a business. In addition, there are certain conditional permissible uses. These include institutions for medical care and rooming, lodging and boarding houses.

In February, 1981, Hope Homes, Inc. applied to the city of Tallmadge for Conditional Zoning Certificate. This permit was granted by the city of Tallmadge on the 9th day of April, 1981. From that adverse decision, appellants filed an appeal to the Court of Common Pleas, Summit County, Ohio. The appellants at that time also sought a declaratory judgment determining that the proposed facility would be violative of the plat restrictions.

This matter was heard by the trial court. At that time, plaintiffs sought to introduce evidence pertaining to the meaning of a family. The trial court sustained objections to the admissibility of this evidence. At trial, each of the plaintiffs further testified that part of the consideration which they understood they were receiving from the

acquisition of lots within the allotment was the ability to maintain their neighborhood as a single-family, private residential area without the incursion of other types of uses. All further testified that the value of their properties would be reduced as a result of the operation of this facility within their allotment.

On the 7th day of April, 1982, the trial court issued its decision determining the validity of the issuance of the Conditional Zoning Certificate and further determining that the proposed use of the premises located at 102 N. Alling Road, Tallmadge, Ohio, by the defendant, Hope Homes, Inc., was **[4]** a proper use of said premises and not in violation of any deed or allotment restrictions that cover the premises. From that adverse decision, the plaintiffs appealed to this court.

The first assignment of error argues that the trial court erred in determining that the proposed use of the premises by Hope Homes, Inc. did not violate the plat restrictions of Hilltop Acres Allotment.

In his opinion the trial judge interpreted and defined that portion of the deed restrictions which reads "The premises shall be used for private residence purposes only * * *." The trial judge separately defined the words *private* and *residence*. The court concluded that a residence use is a use where human beings make their permanent homes. The trial judge further defined *private* as a use "Intended for or restricted to the use of a particular person, group, or class." Appellant contends that the court should not have indulged this separated definition arguing that the Supreme Court has defined "private residence." In support of this contention, appellant refers to a portion of the dicta in the case of *Hunt v. Held*, 90 Ohio St. 280, at page 283, which states as follows:

> "But is there any doubt as to the meaning of the words? The word 'residence,' as we view it, is equivalent to 'residential' and was used in contradistinction to 'business.' If a building is used as a place of abode and no business carried on it would be used for residence purposes only whether occupied by one family or a number of families. Counsel say that the words were intended to describe a type of building. We think not. The word 'residence' has reference to the use or mode of occupancy to which the building may be put. **[5]** If it had been intended that the building was to be for the use of one family only, words indicating such an intention would have been used, as is frequently done, such as a 'a single residence,' 'a private residence,' 'a single dwelling house.'And it is to be noted that the common grantor here, in his deed to another lot owner in the subdivision, used the expression: "This property is sold for single residence purposes only.' "

This dicta could be dispositive of this case but for the facts in this case. The inhabitants of the home in this case shall number six adult women with developmental disabilities. They shall live together as a unit. As a unit, they shall maintain the home, prepare meals and perform the various housekeeping chores. All of their housekeeping functions are performed under the guidance of a house parent who resides in the home. In spite of the fact that the relationship is not one of consanguinty, the residents are a single family unit. *In Carroll v. City of Miami Beach,* 198 So. 2d 643 (Fla. App. 1967), it was held that a group of young religious novices with a mother superior as their family head could properly live as a single family unit.

> "Under the terms of the ordinance any number of persons *occupying the premises and*

> *living as a single housekeeping unit* are entitled to the status of a family. There is no requirement that they be related by consanguinity or affinity." Carroll v. City of Miami Beach (1967), 198 So. 2d 643, 644.

The same reasoning can be drawn from the case of *Garcia v. Siffrin*, 63 Ohio St. 2d 259, wherein the Ohio Supreme Court recognized that a single housekeeping unit, a family, could be composed of "a group of individuals who had joined together in these premises in order to primarily share **[6]** the rooming, dining and other facilities." The emphasis in such an instance may be placed upon the dwelling aspect of the unit, and upon the fact that those who are living within that structure are sharing and maintaining a household as a single unit." (p. 268). The United States Supreme Court has concluded that a "single family unit" can exist in the absence of consanguinity.

> "In our view, any resolution seeking to define this term narrowly would unconstitutionally intrude upon an individual's right to choose the family living arrangement best suited to him and his loved ones. *Moore v. East Cleveland* (1977, 431 U. S. 494, 499." *Saunders v. Zoning Dept.* (1981), 66 Ohio St. 2d 259.

As long as the structure in question is maintained, physically, as a private residence and, as long as it is used and occupied by a group of persons living together as a single household unit, it, by existence and use, is not in violation of restrictions running with the land upon which it is located. It follows that as long as the use is devoted to a family household unit, such use is "private." It follows from the elements thereof that a household unit is in and of itself private as opposed to a multi-family use or an out and out commercial enterprise. Appellant argues that in spite of the family setting, the operators of

this home must provide annual accounting statements, provide reports, provide supervisors and care paid by the State and Federal Government. This is all true, but it is collateral to the family housekeeping unit. It does not make that unit non-private any more than the resident, engaged in business, who does his bookkeeping at home.

[7] The restrictions on the lot in question were recorded in the year 1946. The appellant called Donald Ramsey as a witness. Mr. Ramsey testified that in the year 1946, he was 19 years old. He was asked the following question:

> "Q. Can you recall back to the time that you were 19 years old as to your concept of a family?"
> (Tr. 84).

There was an objection and it was sustained. The sustention of this objection is the basis for appellants' second assignment of error. Mr. Ramsey was asked for *his* concept of a family not the community concept nor the concept of the drawer of the restriction nor of the concept held by parties to the restriction. In the determination of intent, *Williston,* Contracts, Sec. 617 (Rev. Ed.) states that the inquiry of the court should be: What was the meaning of the writing at the time and place it was made between persons of the kind or class who were parties to it? The court properly excluded Mr. Ramsey's opinion.

The home in question is located in an area which has been classified by the Council of the city of Tallmadge as an "R-3 Residential District." Permitted uses in such a district are single family residential dwellings, accessory non-business uses and signs. The ordinance also permits conditional permissible uses as follows:

"Sec. 412-3 Conditionally Permissible Uses

"The Planning Commission may issue conditional Zoning certificates for uses listed herein subject to the general regulations of Article VIII and to the specific requirements of Article VIII referred to below.

[8] "a. Public and parochial schools subject to Subsections 102, 103, 105, 107, 108, 115.

"b. Churches and other buildings for the purpose of religious worship subject to Subsections 102, 105, 109, 115, 118, 121.

"c. Public utilities right-of-ways and pertinent structures subject to Sections 102, 114, 115.

"d. Governmentally owned and/or operated parks, playgrounds and golf courses (except miniature) subject to Subsections 102, 103, 105, 106, 107, 121.

"e. Temporary buildings and uses for purposes incidental to construction work subject to Subsections 111, 112.

"f. Institutions for medical care—hospitals, clinics, sanitariums, convalescent homes, nursing homes, homes for the aged and philanthropic institutions subject to Subsections 102, 103, 105, 107, 109, 113, 115, 121." City of Tallmadge Ordinance 9-1969.

Appellant argues that the use of the property involved is not a "conditional use" and that the trial court erred in holding that the permit issued was valid.

At the outset, let us say that the intended use is a permitted use as a single family residential dwelling. Ordinance No. 9-1969, Sec. 201-32 defines a family as:

> "* * * one or more persons occupying a premises and living as a single housekeeping unit, whether or not related to each other by birth or marriage as distinguished from a group occupying a boarding house, lodging house, or hotel, as herein defined."

In the instant case we have a single housekeeping unit residing in a one family dwelling.

Appellant argues that since the use of this home is not specified as a conditional use, the council had no **[9]** authority to grant a permit. In support, the appellant makes a very correct statement of the law. "Where a zoning ordinance limits the authority of the body to vary or modify the applications of the provisions of a zoning ordinance, actions authorizing greater variance or modification are illegal and contrary to law. *Zurow v. City of Cleveland,* 61 Ohio App. 2d 14." (Page 14 A & E). The use of this home was not a greater variance or modification than all of those specified in the zoning ordinance (Sec. 412-2-3).

Judgment affirmed.

BELL, P. J., CONCURS,
DONOFRIO, J., CONCURS—.

APPROVED:

/s/ JOSEPH E. O'NEILL
Judge

JUDGMENT ENTRY OF THE COMMON PLEAS COURT FOR SUMMIT COUNTY

Case No. CV 81 4 1056

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

ANDREW BERES, *et al,*
Plaintiffs

vs.

HOPE HOMES, INC., *et al.,*
Defendants.

JUDGMENT ENTRY

This cause came on to be heard by the Court, without the intervention of a jury, and upon consideration of the evidence and the briefs, and based upon the findings of fact and conclusions of law entered by this Court on February 18, 1982, it is ordered that:

1. The conditional zoning ordinance of the City of Tallmadge, Ohio enacted on the 9th day of April, 1981, granting a conditional zoning certificate to Defendant Hope Homes, Inc. and being Ordinance Number 291981 is hereby declared to be a reasonable exercise of discretion based upon the City's zoning provisions. The order, adjudication and/or decision of the Tallmadge City Council, represented by said Ordinance, is hereby affirmed.

2. The issues raised by Plaintiffs with regard to an administrative appeal from the actions of the Tallmadge City Council have been rendered moot by virtue of subsequent case law governing the disputed language and the above referred to appeal is dismissed as moot.

3. That the proposed use of the premises located at 102 North Alling Road, Tallmadge, Ohio by Defendant Hope Homes, [2] Inc., is hereby declared to be a proper use of said premises and not in violation of any deed or allotment restrictions that cover the premises.

4. The preliminary injunction instituted by this Court against Defendants, the City of Tallmadge and Hope Homes, Inc., is hereby vacated and set aside.

5. That Plaintiffs pay all costs of this matter.

6. That the Court specifically reserves to it the issue of the assessment of damages against Plaintiffs arising from the unwarranted preliminary injunction obtained by Plaintiffs.

7. The Court expressly determines that pursuant to Rule 54(B) of the Ohio Rules of Civil Procedure there is no just reason for delay in entering final judgment upon all issues in this matter with the exception of the issue of damages arising from the unwarranted injunction.

William R. Baird

Judge

Ordinance 29-1981

Presented by:
Councilwoman Treichler

APPROVING AND GRANTING A CONDITIONAL ZONING CERTIFICATE TO HOPE HOMES, INC., FOR PROPERTY KNOWN AS 102 NORTH ALLING ROAD, TALLMADGE, OHIO

WHEREAS, Hope Homes, Inc. has filed an application with this Council requesting a Conditional Zoning Certificate for property located at 102 North Alling Road for the purpose of using such premises as a family home, and

WHEREAS, the State of Ohio has clearly indicated its desire to establish residential care facilities in areas that are primarily residential in nature, and

WHEREAS, the State and this Council deem it to be desirable not to institutionalize persons having a developmental disability, and

WHEREAS, the State definition of a "family home" states that such should be a residential facility in a family setting, and

WHEREAS, the Planning and Zoning Commission has reviewed the application referred to herein and has unanimously recommended approval to Council, and

WHEREAS, a public hearing has been held and all other requirements of law have been complied with

NOW, THEREFORE, BE IT ORDAINED by the Council of the CITY OF TALLMADGE, COUNTY OF SUMMIT, STATE OF OHIO:

SECTION 1. That Hope Homes, Inc. be and is hereby granted a Conditional Zoning Certificate to use the following described premises as a family home:

> Situated in the City of Tallmadge, County of Summit and State of Ohio and known as being all of Lot No. 51 and the southerly 15 feet front and rear of Lot No. 50 in Hill Top Acres Allotment as recorded in Plat Book 41, Pages 49 and 50, Summit Co. Records of Plats. Premises further known as 102 North Alling Road, Tallmadge, Ohio.

SECTION 2. That the Conditional Zoning Certificate granted in Section 1 whereof is granted subject to the following conditions:

> 1. All mentally retarded individuals who reside in the home shall be female adults (18 years of age or older).
>
> 2. The applicant shall provide continuous care and supervision at the home.
>
> 3. All supervisors shall be trained and experienced in a residential facility for mentally regarded adults. Such experience shall be a minimum of six (6) months, and there shall be not less than eighty (80) hours of in-service training as to the supervision of mentally retarded adults, under the supervision of the Blick Clinic, Tallmadge, Ohio, or other qualified agency.
>
> 4. All individuals shall be ambulatory.

5. That no additional facilities (identified as but not limited to: group home, family home, half-way house, rehabilitation center, nursing home or any other such health or welfare center or institution for the purpose of housing groups of persons not of the same family and requiring a conditional zoning permit) be established or otherwise permitted within a distance of 2,000 feet from the boundaries of the property herein considered.

6. That it is hereby reaffirmed that the policy of the City in granting conditional zoning permits for commercial or other permitted uses under the zoning law will not be modified by the permission granted herein. Furthermore that the permission granted herein cannot and will not be considered as setting a precedent for granting of other zoning variances by reason of its existence.

7. That the house may not be altered in structure or features either inside or outside, beyond that necessary for normal maintenance or minor improvement. Furthermore that additional rooms may not be added thereto.

8. That the conduct of the occupants be controlled to a level acceptable and compatible with the neighbors or reasonable for the norm at their level of development. If such is not provided, this will be considered cause for revocation of the license.

9. That the license will be renewed once each year only after all the conditions herein described have been reviewed and established as being fulfilled.

10. That any city department required to make an investigation of this home for licensing or renewal, provide the report in writing to the Council by way of the Clerk of Council.

11. That the following departments are to make initial and yearly inspections:

Building Department
Zoning Department
Fire Inspector

12. That any violation reported about this home be directed to the appropriate city department with a copy of the violation and disposal of the problem identified.

13. That the license for operating the home be revoked at any time for substantial violation of any City Law.

14. That a report be prepared by the Clerk of Council prior to the license renewal summarizing the performance of the home during the preceding period and any reports by the various city departments or by citizen comment or letter.

15. That the neighbors (identified as the five (5) contiguous and adjacent on either side of the house, those five (5) neighbors centered on the house in question, but across the street therefrom and the five (5) neighbors centered on the house, but to the rear therefrom) be requested by the Clerk of Council to comment on the performance of the home during the preceding period.

16. In the event that the license is revoked or not renewed, this conditional zoning permission is hereby revoked and the use reverts back to the preceding zoning condition.

17. That the applicant shall post with the City of Tallmadge evidence of insurance, in an amount not less than $500,000, including therewith specific evidence demonstrating insurance against negligent or malicious injury or damage by the residents to real or personal property.

18. That the applicant shall provide the City of Tallmadge an appropriate fidelity bond, or evidence of insurance, in an amount not less than $500,000 covering the supervisory employees, which bond or insurance shall evidence a guarantee of the faithful performance of the duties in accordance with the approved job description by the Board of Directors of the applicant.

19. Applicant agrees and understands that, in the event any of the conditions herein contained are breached by the applicant, or new conditions are requested (regardless of the financial commitments, capital expenditures or investments made by applicant) the City Council shall conduct a hearing thereupon, giving the applicant at least twenty (20) days prior written notice and giving the applicant the opportunity to be represented thereat by competent legal counsel. Abutting property owners shall receive at least twenty (20) days written notice in advance of such hearings.

20. That the applicant agrees that the Council of the City of Tallmadge shall retain jurisdiction during the term of this certificate to add such further conditions as may be required to assure the continued health, safety, and welfare of the residents of Alling Road, and all other adjacent areas specifically as they may relate to any programatic or supervisory difficulties as they may result out of the care and maintenance of the residents.

21. Certificate is for a family home for not more than six (6) mentally retarded women plus staff.

SECTION 3. The breach of any of the conditions established herein shall automatically invalidate the certificate granted herein, and shall constitute a violation of the Zoning Ordinance of the City of Tallmadge, as amended, and shall be punishable as per Section 902.2 of the Tallmadge City Zoning Ordinance 67-1966 as amended.

Passed: April 9, 1981

Frances Cochran	Nancy Treichler
Clerk of Council	Pres. of Council Pro Tem
FWL:ak	
2-2-81 3-25-81	
Filed with the	
Acting Mayor April 9, 1981	Approved:
	Robert Merriman
	Acting Mayor
	This 9th day of April, 1981

Committee Assignments 1. _____

2. _____

Others _____

Reading 1st _____ 2nd _____ 3rd _____

***SECTION 4. That this ordinance shall take effect and be in force from and after the earliest time allowed by law.**